

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7882 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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APPLE FINANCE LIMITED

Versus

MUNIR ALAM MOHAMMED SHAIKH

Appearance:

1. Criminal Misc.Application No. 7882 of 2000
MR ASHUTOSH R BHATT for Petitioner No. 1-4
RULE SERVED for Respondent No. 1
Mr. S.J. Dave, APP for Respondent No. 2
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 28/08/2001

ORAL JUDGEMENT

1. The petitioners, by way of filing this
application under Section 482 of the Code of Criminal

Procedure ('Code' for short), have prayed to quash complaint filed by respondent No.1 against the petitioners in the Court of learned Chief Judicial Magistrate, Vadodara, being Criminal Case No.4788 of 2000 for the offences punishable under Sections 406, 418, 420 and 114 of the Indian Penal Code, and the process issued by the Court by its order dated December 4, 2000 against the petitioners for the offence punishable under Section 420 of the Indian Penal Code.

2. The averments made in the complaint (Annexure "A"), prima facie, show that respondent No.1 had purchased tanker bearing RT0 Registration No.GJ-7X-7658 on a hire purchase agreement entered into between respondent No.1 and the petitioners. The petitioners had taken back possession of tanker bearing RT0 Registration No.GJ-7X-7658, as respondent No.1 could not pay up the dues of instalments as per the hire purchase agreement. It appears that respondent No.1 had filed Civil Suit No. 606 of 2000 in the Civil Court and prayed for an interim injunction. The Civil Court has dismissed the application for interim injunction which order was confirmed by the District Court, Vadodara, in Misc. Civil Application. Thereafter, the respondent No.1 lodged a complaint in the Court of learned Chief Judicial Magistrate, Vadodara, for the offences punishable under Sections 406, 418, 420 and 114 of the Indian Penal Code. On the said complaint, the learned Chief Judicial Magistrate, Vadodara, issued process under Section 202 of the code for the offence punishable under Section 420 of the Indian Penal Code against the petitioners.

3. Heard the learned advocate for the petitioners and learned Additional Public Prosecutor, Mr. S.J. Dave. Respondent No.1 (original complainant), though duly served, has not appeared.

4. It is an admitted fact that respondent No.1 had purchased tanker bearing RT0 Registration No.GJ-7X-7658 by taking loan under hire purchase agreement from the petitioners. It is also an admitted fact that respondent No.1 had not repaid the loan payable in monthly installments under the hire purchase agreement for purchase of tanker in question. With the result, according to the terms and conditions of the hire purchase agreement, the petitioners had taken back possession of the tanker in question from respondent No.1. Reading the complaint, in my opinion, the averments made therein do not satisfy the ingredients of offence under Section 420 of the Indian Penal Code. In the case of Trilok Singh and others vs. Satya Deo

Tripathi, reported in AIR 1979 Supreme Court 850, a truck was purchased by the complainant (respondent) under a hire purchase agreement; loan was payable in monthly installments; on default of any one of instalment, the financier had terminated hire-purchase agreement even without notice and seizes the truck. The purchaser had filed criminal case against the financier. The Supreme Court in the above facts of the case held:

"That the proceeding initiated was clearly an abuse of the process of the Court. It was not a case where any process ought to have been directed to be issued against the accused (appellants). On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct."

Bearing in mind the well-settled principles law laid down by the Supreme Court, in my view, allowing the criminal proceeding of the present nature to continue would result in manifest injustice and the present proceeding initiated was clearly an abuse of the process of the Court. The dispute raised by respondent No.1 was purely of a civil nature which could be properly and adequately decided in a civil court.

5. As a result of foregoing discussion, this application is allowed. The complaint (Annexure "A") being Criminal Case No.4788 of 2000 for the offences punishable under Sections 406, 418, 420 and 114 of the Indian Penal Code, filed by the respondent No.1 against the petitioners, pending in the Court of learned Chief Judicial Magistrate, Vadodara, and the process issued by the Court by its order dated December 4, 2000 against the petitioners for the offence punishable under Section 420 of the Indian Penal Code, are quashed. Rule is made absolute.

August 28, 2001 (M.H. Kadri, J.)
(swamy)